

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MATTHEW HERRICK,

INDEX NO.

Plaintiff,

ATTORNEY AFFIRMATION IN
SUPPORT OF ORDER TO SHOW
TO SHOW CAUSE SEEKING
INJUNCTIVE RELIEF AND
EMERGENCY RESTRAINING
ORDER

- against -

GRINDR, LLC

Defendant.

CARRIE GOLDBERG, ESQ., an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms under penalty of perjury the following is true:

1. I am an attorney at C.A. Goldberg, PLLC, attorney for Plaintiff Matthew Herrick ("Plaintiff"), and as such am familiar with the facts and circumstances stated herein. I submit this Affirmation in support of the Order to Show Cause seeking injunctive relief to compel Defendant Grindr ("Grindr") to deactivate impersonating profiles that exist in Plaintiff's name with Plaintiff's identifying information and seeking a restraining order to prohibit Grindr from allowing new profiles to be made under Plaintiff's name with Plaintiff's identifying information.
2. The underlying request for emergency injunctive relief brought by Plaintiff relates to Plaintiff's claims against Grindr, LLC for negligence, violation of N.Y. Gen. Bus. Law Section 349 ("the Deceptive Business Practices Act"), violation of N.Y. Gen Bus. Law Sections 350, 350-a ("False Advertising"), Intentional Infliction of Emotional Distress,

Failure to Warn, Negligent Misrepresentation and additional claims. These claims arise out of Grindr's failure to act as one of its users repeatedly posts fraudulent profiles with Plaintiff's identifying information and instructs other users find Plaintiff at work or at home, be aggressive and engage in sexual acts with Plaintiff.

3. From November 2016 through present, an individual, "JC" has been creating profiles on Grindr impersonating Plaintiff, posting his photographs, home address and work location. *See Plaintiff's Affirmation* ¶ 4-5. The offender identifies Plaintiff as being HIV-positive, wanting violent sex (e.g. fisting and bondage), persistent suitors, and group sexual encounters. *See Pl. Aff.* ¶ 6.. The offender has been coordinating meetings between Grindr users and Plaintiff, without Plaintiff's knowledge or consent. *See Pl. Aff.* ¶ 5. This user is manipulating the geo-physical settings to correspond with Plaintiff's locations. Because of these fake profiles and fake conversations, between 1 and 16 strangers have shown up at Plaintiff's home and work on a daily basis. *See Pl. Aff.* ¶ 7. These men expect and demand sex. On more than one occasion, the men seeking sex with Plaintiff have refused to leave. *See Pl. Aff.* ¶ 8. They wait for Plaintiff down the street after being told to leave. *See Pl. Aff.* ¶ 8. There have been aggressive and violent interactions with these men, some of whom have indicated the post on Grindr specifically instructed that these men are urged to return after being rejected. *See Pl. Aff.* ¶ 8. On one occasion one of the men attacked Plaintiff's roommate when his advances were rejected. *See Pl. Aff.* ¶ 9.
4. Plaintiff suffers severe emotional distress and constant fear for his safety and the safety of those around him. *See Pl. Aff.* ¶ 20. The police have been called on multiple occasions and approximately 14 police reports have been filed. *See Pl. Aff.* ¶ And yet, Grindr has

done nothing – despite repeated reports and requests for help from Plaintiff, his roommates, and his family. *See Pl. Aff.* ¶ 20.

5. Grindr’s failure to act despite knowledge of the conduct is tantamount to facilitating the conduct, is in violation with its own terms of service, and is actionable under numerous claims. These claims include but are not limited to: negligence violation of New York General Business Law §349 (“Deceptive Business Practices Act”); violation of New York General Business Law §350, 350(a) (“False Advertising”); Intentional Infliction of Emotional Distress, Failure to Warn, Negligent Misrepresentation, and more.
6. Plaintiff is a 32 year old male living in New York County. He works at a restaurant and is pursuing a career in acting and modeling. On or about May, 2011, Plaintiff joined Grindr, an application for men to meet other men, and subsequently used the application on and off for several years. *See Pl. Aff.* ¶ 1-2.
7. On or about June, 2015, Plaintiff started communicating with “JC” through Grindr and soon after, entered into a relationship. On or about November, 2015, Plaintiff removed his Grindr profile. *See Pl. Aff.* ¶ 3.
8. In November, 2015, and without Plaintiff’s knowledge, JC began to impersonate Plaintiff on Grindr by creating profiles under his name, and communicating with other users. He said he was doing it to raise awareness about Plaintiff’s career. Plaintiff was able to convince JC to stop. In August, 2016, Plaintiff began using Grindr again under his own account. In early October, 2016, Plaintiff ended the relationship with JC. *See Pl. Aff.* ¶ 4.
9. After Plaintiff broke up with JC, JC started stalking and harassing Plaintiff online and offline. JC against started creating Grindr profiles impersonating Plaintiff. Once a profile was created, he engaged in conversations with users and coordinated sexual encounters

with them without Plaintiff's knowledge or consent. He sent strangers to Plaintiff's home and to Plaintiff's place of work with the expectation that Plaintiff was going to have sex with them. *See Pl. Aff.* ¶ 5.

10. The profiles he created had Plaintiff's pictures and accurate information about Plaintiff's height, weight, ethnicity and build. The profiles he created included names like "Raw Pig Bottom," "Hi," "hey," and "muscle daddy." Some profiles stated that Plaintiff is "hosting in Harlem, into serious kink and many fantasy scenes," that Plaintiff is HIV positive, and interested in hardcore sex (e.g. fisting) and bondage. Other profiles stated that Plaintiff has drugs to provide to users. One impersonating profile named "Gang Bang Now!" described Plaintiff as "waiting on all 4s with [his] ass lubed." Another one, named "👉↓Hosting👈↑," described Plaintiff as "looking for a group of hung tops to come over and destroy [his] ass." *See Pl. Aff.* ¶ 6.
11. As a result of the numerous fake profiles JC created impersonating Plaintiff and inviting people to find Plaintiff and have sex with me, between 1 and 16 people have shown up at Plaintiff's home or place of work on a daily basis between November, 2016 through today. These strangers expect and/or demand sex with Plaintiff. The typical number of visitors is 4 to 8 at home, and at its peak, an additional 4 to 8 at work. *See Pl. Aff.* ¶ 7.
12. Between January 13, 2017 and January 17, 2017, 4 to 13 men showed up at Plaintiff's work every day expecting to have sex with him in the bathroom. When Plaintiff informed them they had to leave and that the account was not real, several stayed nonetheless, refusing to leave. One stayed and watched Plaintiff for 30 minutes. On January 16, 2017, two different men came to Plaintiff's home and refused to leave after Plaintiff told them he had been impersonated. They lingered outside of his home, waiting for him to exit or

to let them in. On January 17, 2017, 13 men visited him either at home or at work. During a 4-minute time span (12:22pm – 12:26pm), six different men showed up at his work to have sex. One of the men who went to Plaintiff's home went to live out a rape fantasy that was posted on an account. He entered the apartment building, stood outside of Plaintiff's apartment and then returned 15 minutes later insisting that Plaintiff had just urged him to return. *See Pl. Aff.* ¶ 8.

13. The men who respond to JC's fake profiles are intimidating, often on drugs, or seeking drugs from Plaintiff based on false representations. Some men have banged on the windows of Plaintiff's home demanding access. Some men show up sweating, enter his building and refuse to leave until they are escorted out. After Plaintiff told one man who was demonstratively drugged about the impersonation, he became hostile and aggressive and had to be escorted out by the police. He returned another day to further harass him. On one occasion a man went into Plaintiff's building and stood outside of Plaintiff's door hiding and waiting after he was told to leave. Once Plaintiff's roommate left the apartment to convince him to leave the man grabbed his roommate's phone from his hands and got into a physical altercation with him. *See Pl. Aff.* ¶ 9.
14. On one occasion, a man went into the restaurant where Plaintiff works and was aggressively backing him up towards the stairs demanding that Plaintiff go downstairs to the bathroom to have sex with him. On another occasion while Plaintiff was working a busy shift, another stranger went in and demanded sex. When Plaintiff told him he had been impersonated, he started screaming in front of Plaintiff's coworkers, management, and guests, "YOU LYING WHORE! ANOTHER WHORE FROM GRINDR!" and repeatedly yelled, "FUCK YOU!" *See Pl. Aff.* ¶ 10.

15. JC has used Grindr to incite hostility and violence towards Plaintiff. He portrays Plaintiff as a racist on these fake profiles he creates in my name. Individuals who have communicated with my fake profiles call my job and threaten me that if I keep calling people the “N word” they will come to my work and beat me. Many of the individuals who find me to have sex are under the impression that Plaintiff is interested in bondage, fisting, and other forms of rough sex. There is a hostility and aggressiveness about most of the individuals who go after Plaintiff. *See Pl. Aff. ¶ 11.*
16. In addition to the uninvited and unexpected dangerous visitors, Plaintiff was receiving at least 25 text messages a day from strangers who were getting his number through Grindr. They sent Plaintiff naked pictures and solicited sexual experiences. After Plaintiff changed his number, the offender started posting Plaintiff’s new number to the fake Grindr accounts and the harassing messages continued. Plaintiff had to change his number a second time. *See Pl. Aff. ¶ 12.*
17. Plaintiff had to deactivate his apartment buzzer because there were so many people showing up at his home. Nonetheless, every time Plaintiff left his apartment and every time he returned home there were men waiting for him, waiting to have rough sex with him. Plaintiff posted signs in the building’s windows telling visitors not to go up to the apartment: “WARNING GRINDRERS: Do Not Buzz for or Enter Apt. [**] FAKE PROFILE. REPORT to GRINDR.” Plaintiff has called the police numerous times and has filed approximately 14 police reports. The offender was arrested in early January, 2017. Plaintiff had been granted an order of protection in family court. Despite the arrest and two orders of protection, one through family court, and one through criminal court, the

offender continues to harass Plaintiff through Grindr and continues to send strangers to find Plaintiff for sex. *See Pl. Aff.* ¶ 13.

18. Plaintiff reported the abusive accounts to Grindr through its interface approximately 50 times throughout the months of November, 2016 through January, 2017. Separately, Plaintiff's sister and two roommates also faced harassment and also reported the abusive accounts to Grindr numerous times as well – on Plaintiff's behalf and their own. *See Pl. Aff.* ¶ 14.
19. At no time did Grindr remove the abusive accounts. In response to Plaintiff's detailed pleas, at best, Grindr responded with an auto-generated reply stating, "thank you for your report." *See Pl. Aff.* ¶ 15.
20. At times, there were multiple impersonating accounts side-by-side with the same name – an incontrovertible unambiguous demonstration of policy violations, such as on January 20, 2017 when two accounts both named "HUNGRY BTM↓!!!" were both posted, both soliciting men interested in unprotected sex (i.e. "My hairy 🍆needs a BIG 🍆 NOW!!! I prefer my veggies raw!" and "My hungry hairy ass is always looking for good 🍆. I prefer my veggies raw.") *See Pl. Aff.* ¶ 16.
21. The problem accounts relate to those controlled by Oscar Juan Carlos Gutierrez. He has used the following emails and phone numbers: balance2089@gmail.com, (917) 640-8243, (347) 360-3902, (347) 389-4759. The locations he sends people are: 342 Manhattan Avenue, New York, NY 10026 and 1004 2nd Avenue, New York, NY 10022. He lives at 601 East 186th Street, Apt. 4 Bronx, NY 10458 and from this address Plaintiff believe he is often having correspondences with strangers while he's impersonating me. *See Pl. Aff.* ¶ 17.

22. On January 24, 2017 this firm sent a cease and desist and preservation letter to Grindr by post and electronic mail. *See Pl. Aff.* ¶ 18.
23. Plaintiff continues to suffer serious pain and mental distress as a result of Grindr's role in facilitating this unfathomable nightmare. Plaintiff had been a private person with a quiet and low-key life, toiling away at a restaurant full-time to pursue a career in acting and modeling. Now photographers are afraid to work with Plaintiff on a professional level. Plaintiff had to drop a sponsorship with a touring company because of the exposure and danger. He is humiliated on a daily basis and he is afraid to be in public places or at home alone. *See Pl. Aff.* ¶ 19.
24. Plaintiff is in need of emergency relief because the next stranger who approaches his home or his work will have a weapon, will assault Plaintiff, will rape Plaintiff, or worse. Plaintiff is afraid to be alone, he is afraid to go to sleep, he is afraid to be in his own home. Because Grindr has refused to answer desperate pleas to suspend JC from Grindr and prevent him from creating profiles in Plaintiff's name and inviting strangers to rape him, Plaintiff lives in constant fear for his safety, for his life, and for the safety of his friends, coworkers and family. *See Pl. Aff.* ¶ 20.
25. Plaintiff has established a (1) likelihood of success on the merits, (2) irreparable harm if the relief is denied, and (3) a balance of the equities favors granting relief. See the attached Memorandum of Law. *See Memorandum of Law p. 5-8.*
26. On January 26, 2017, this firm notified Grindr of the emergency relief sought herein. At 12:05pm EST, a letter was sent electronically from your affirmant's office to legal@grindr.com informing them that immediate relief would be sought in New York

State Supreme Court County of New York on January 27, 2017 at approximately


12:00pm. (Letter annexed here to).

Defendant did not respond to the notification. Cg

27. The instant relief has not previously been sought.

WHEREFORE, I request that the court sign the order to show cause and for a hearing to be scheduled and for whatever other and further relief it deems just and appropriate.

Date: New York, NY
January 27, 2017



Carrie Goldberg
C.A. Goldberg, PLLC
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Brooklyn, NY 11241
(646) 666-8908
Attorney for Plaintiff

From: **Carla Cain-Walther** carla@cagoldberglaw.com
Subject: FW: Notice of Filing
Date: January 26, 2017 at 2:13 PM
To: **Carrie Goldberg** carrie@cagoldberglaw.com, **Lindsay Lieberman** Lindsay@cagoldberglaw.com



Sincerely,
Carla Cain-Walther
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From: Carla Cain-Walther <carla@cagoldberglaw.com>
Date: Thursday, January 26, 2017 at 12:05 PM
To: "legal@grindr.com" <legal@grindr.com>
Subject: Notice of Filing

To Whom It May Concern:

Please see attached correspondence.

Sincerely,
Carla Cain-Walther
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January 26, 2017

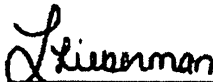
Grindr, LLC
Legal@grindr.com

Re: Notice of Filing

Dear Grindr,

Please be aware that this office is filing papers seeking immediate relief against Grindr in New York State Supreme Court, New York County, located at 60 Centre Street, ex parte office, New York, NY, at approximately 12:00pm EST, tomorrow January 27, 2017.

Sincerely,


Lindsay Lieberman, Esq.



C A GOLDBERG

PLLC NEW YORK